IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 1 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF WEALTH-TAX

Versus

GORDHANBHAI JETHABHAI PATEL

Appearance:
MR AKIL KURESHI with MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 22/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench "A" has referred the following question of law for our opinion relating to assessment year 1977-78 :-

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in coming to the conclusion that the deposit in the name of Gordhanbhai Jethabhai Zaverbhai (H.U.F.) is not includible in the wealth of the assessee ?"

2. The assessee is an individual. In the books of account of the firm M/s Gordhanbhai Jethabhai, there was a credit balance in the name of Gordhanbhai Jethabhai Zaveri (HUF). The assessee claimed that the credit balance in the said account belonged to the HUF and was not liable to be included in the wealth of the assessee. The WTO, however, held that the ownership of the said balance was of the assessee. In view of the said conclusion, the WTO included the said credit balance in the wealth of the assessee. On appeal filed by the assessee, the Appellate Assistant Commissioner of Wealth-tax confirmed the order of the WTO and dismissed the appeal of the assessee. Thereupon, the assessee approached the Tribunal. The Tribunal, following its own order in the assessee's case for the assessment years 1967-68 to 1976-77, held that the balance in the accounts belonged to the HUF and was not liable to the included in the wealth of the assessee. The Tribunal accordingly allowed the appeal of the assessee. Hence, this reference at the instance of the revenue.

3. As observed earlier, the Tribunal has relied upon its own judgment in the case of the assessee for the assessment years 1967-68 to 1976-77. The earlier order passed by the Tribunal was considered by the High Court in Commissioner of Wealth Tax vs. Gordhanbhai Jethabhai Patel, (1993) 203 ITR 706. After considering the expression `Hindu undivided family' as appearing in the Wealth Tax Act, 1957, the Division Bench of this High Court has held as under :-

> "The expression "Hindu undivided family" in the Wealth-tax Act, 1957, is used in the sense in which a Hindu joint family is understood in the personal laws of Hindus. Under the Hindu system of law a joint family may consist of a single male member and his wife and daughters and there is nothing in the scheme of the Wealth-tax Act, 1957, to suggest that a Hindu undivided family as an assessable unit must consist of at least two

male members. The contention that when there is complete partition, no further Hindu undivided family can come into existence cannot be accepted. There can be no doubt that the larger Hindu undivided family will come to an end but that would not mean that a smaller Hindu undivided family of a coparcener who receives the share in the coparcenary property cannot come into existence thereafter."

4. In view of the principle laid down by the Division Bench of this Court in the above quoted decision, we are of the opinion that the Tribunal was right in holding that the deposit in the name of Gordhanbhai Jethabhai Zaveri (HUF) was not includible in the wealth of the assessee. The reference is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

The reference stands disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-